

REMARKS

I. Status of the Claims

Claims 1-18 are pending.

II. Response to the Rejection under 35 U.S.C. § 102(a) based on Lynch

Applicants note the rejection of claims 1-5, 8-11, and 16-18 under 35 U.S.C. § 102(a) as being unpatentable over Lynch et al. (U.S. Pat. Appl. Publ. No. 2003/0004052, now issued as U.S. Pat. No. 6,759,361) and respectfully ask the Examiner to reconsider and withdraw the rejection in view of the following remarks.

Applicants respectfully ask the Examiner to remove Lynch '052 as a reference in view of the attached Declaration under 37 C.F.R. § 1.131. Lynch '052 is potentially available as a § 102(a)/103 reference against Applicants' claimed process because its publication date of January 2, 2003 precedes Applicants' filing date of July 1, 2003. In the attached declaration, Dr. Sandor Nagy and Karen Neal-Hawkins declare that they invented the claimed subject matter, which is summarized in invention disclosure C02-248 (attached as Exhibits A1 and A2), prior to January 2, 2003, the publication date of Lynch '052. Applicants respectfully ask the Examiner to consider the Declaration and remove the '052 publication as a reference.

The Lynch '361 patent was not available as a potential reference under § 102(a)/103 because it issued on July 6, 2004, i.e., well after Applicants' July 1, 2003 filing date.

Neither the Lynch '052 publication nor the Lynch '361 patent could have been a statutory bar under Section 102(b). In particular, the Lynch '052 publication appeared less than one year before Applicants' July 1, 2003 filing date. In addition, the '361 patent issued well after Applicants' filing date.

The Lynch '052 publication and the corresponding Lynch '361 patent might also have been applied under Section 102(e)/103 because the filing date of each (June 4, 2001) predates Applicants' July 1, 2003 filing date. However, Lynch '052 and '361 can be disqualified under Section 103(c) because at the time Applicants made their invention, both the invention and the subject matter of Lynch '052 and '361 were owned by Equistar Chemicals, LP or were subject to an obligation to assign the invention to Equistar Chemicals, LP. A separate statement confirming this is attached.

III. Response to the Rejection under 35 U.S.C. § 103(a) based on Lynch in view of Sartain

Applicants traverse the rejection of claims 6 and 7 under 35 U.S.C. § 103(a) as being unpatentable over Lynch et al. (U.S. Pat. Appl. Publ. No. 2003/0004052, now issued as U.S. Pat. No. 6,759,361) in view of Sartain (U.S. Pat. No. 6,184,169). The Examiner should reconsider and withdraw the rejection if he agrees that Lynch '052 can be removed as a reference.

IV. Response to the Objection

The Applicants note the objection to claims 12-15 as being dependent upon a rejected base claim. In view of the preceding remarks, the base claim should be allowed and the objection removed.

V. Conclusion

In view of the remarks above, Applicants respectfully ask the Examiner to enter the Rule 131 declaration, reconsider and withdraw the rejections under Sections 102(a) and 103(a), withdraw the objection, and pass the case to issue. Applicants invite the Examiner to telephone their attorney at (610) 359-2276 if he believes that a discussion of the application might be helpful.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail, with sufficient postage, in an envelope addressed to: Commissioner for Patents, P.O. Box. 1450, Alexandria, VA 22313-1450 on August 17, 2004.

Jonathan L. Schuchardt
Name of person signing

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Respectfully submitted,
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Statement of Common Ownership

I certify that at the time the invention claimed in Appl. Ser. No. 10/611,827 was made, the '827 application and the subject matter of U.S. Pat. Appl. Publ. No. 2003/0004052 (Lynch et al.) and the corresponding U.S. Pat. No. 6,759,361 was owned by Equistar Chemicals, LP or was subject to an obligation to assign the invention to Equistar Chemicals, LP.



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